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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 CAN'T STOP PRODUCTIONS, INC.,

5 Plaintiff,

6 v.

17 Civ. 6513 (CS) (IMS)
Status Conference

7 SIXUVUS, LTD., et al.,

8 Defendants.

White Plains, New York
November 9, 2018

9 -----x
10
11 Before:

12 THE HONORABLE LISA MARGARET SMITH,

13 Magistrate Judge

14 APPEARANCES

15 EISENBERG TANCHUM & LEVY

16 Attorneys for Plaintiff

17 STEWART L. LEVY

18 ADELMAN MATZ P.C.

Attorneys for Defendants except Felipe Rose

19 GARY P. ADELMAN

20 HILL WALLACK

21 Attorneys for Defendant Felipe Rose

22 ERIC I. ABRAHAM

RICHARD A. CATALINA, JR.

23 KAREN WILLIS, Intervenor
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Digital recording.

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1 THE DEPUTY CLERK: In the matter of Can't Stop
2 Productions, Inc., versus Sixxvus, Limited, et al.

3 Counsel, please note your appearance for the record.

4 MR. LEVY: I'm Stewart Levy, of the firm Eisenberg,
5 Tanchum & Levy, with Can't Stop, the plaintiff.

6 MR. ADELMAN: Gary Adelman for all of the defendants,
7 except Felipe Rose.

8 And sitting with me is non-admitted, but passed the
9 bar, Briana Thomas, who will not be speaking today.

10 Thank you.

11 MS. WILLIS: Karen Willis, intervenor.

12 THE COURT: Mr. Abraham, can you hear us?

13 MR. ABRAHAM: Yes, I can.

14 Thank you very much.

15 THE COURT: All right. You need to state your
16 appearance.

17 MR. ABRAHAM: Thank you.

18 This is Eric Abraham, on behalf of Felipe Rose. I'm
19 from the law firm Hill Wallack, in Princeton, New Jersey.

20 And with me on the phone is Richard Catalina from my
21 firm.

22 And I'd like to thank the Court for accommodating us
23 by allowing us to call in.

24 THE COURT: All right. As you know, there's a motion
25 pending before the Court for a determination of whether there's

1 an enforceable settlement. An issue has arisen about an
2 alleged violation of at least the spirit of that prospective
3 settlement.

4 I need to tell you right up front, I only have a
5 limited amount of time today. I'm not intending to spend all
6 day on this matter. So I'm willing to hear all of you.

7 The one, frankly, major concern that I have is that
8 even if there were to have been a violation of the settlement,
9 I don't see that there's any element of the settlement
10 agreement which identifies what the consequences of such a
11 breach would be, which, of course, is something of a concern.

12 But I don't know who wants to be heard first.

13 MR. LEVY: Well, your Honor, if I may, I wrote the
14 letter to get this started.

15 I just thought I would take advantage of the fact that
16 because the motion is pending, there's continuing jurisdiction
17 of the Court. And we obviously want this to end and
18 (unintelligible) as possible. And it just seems to me that
19 whether the Court finds there's a binding settlement agreement
20 or if there isn't, we're still going to have issues come up.
21 And I'd like it that when we have -- when this case is finally
22 over, it's finally over. So I thought -- when we saw these two
23 concerts, we didn't write -- Ken Starr didn't write into the
24 Court and say -- seek an order to show cause or a stay or ask
25 for damages. We don't ask for damages or anything in the

1 letter.

2 But what I ask in the letter is, maybe, since we
3 see -- here's -- here is the Sixxvus group in practice --
4 giving them the benefit, they are trying to comply with what
5 they think are the terms of the settlement. And in practice,
6 this is what it looks like. And there may be things, for
7 example, on the second TV show where the announcers introduce
8 them as the Village People, and they don't -- so they would
9 say, "Hey, we can't stop that." You know, it can all be both
10 ways. There's a ten-minute speech in German which he explains
11 on the first concert that the name was taken away, and maybe
12 that should be part of the act in English, too.

13 All I was thinking was: Hey, this is a great
14 opportunity, while we have continuing jurisdiction is, put
15 aside for today the legality. Is there a settlement agreement
16 or there isn't. Or if there's a settlement agreement, we still
17 have issues, as you just appointed out: What are the damages?
18 What do we do? What, we go to court every week?

19 So I thought: Okay. Here are two (unintelligible)
20 instances. If Ms. Willis has instances of anything else, bring
21 it to everyone's attention now and say maybe we should deal
22 with this now. We might facilitate this (unintelligible)
23 issue.

24 So that's -- our point was just to throw ourselves on
25 the Court and say maybe this is a good opportunity and bring us

1 close to a settlement.

2 THE COURT: Mr. Levy -- Mr. Adelman. I'm sorry.

3 MR. ADELMAN: Thank you, your Honor.

4 So I agree with Mr. Levy that I'd like this to end.

5 I would like to say that my clients worked hard as
6 hard. And of two videos that were presented by Mr. Levy, which
7 only represent a portion of the shows that they've done, I
8 would like to address the first video briefly, which is, if you
9 go through the settlement transcript, not only did my clients
10 comply with it, but they over-complied with it. They wore the
11 costumes that they're allowed to for less time than they're
12 allowed to. They sung less than 50 percent of the songs that
13 they're allowed to. They're allowed to sing 55 percent. And
14 they came up with an act that does not open with Village People
15 anything. In fact, I think they did it quite creatively.

16 There's no violation of the settlement agreement
17 there. There's no iota of it. It's within the spirit, and
18 it's within the terms.

19 I just think that when the intervenor saw the video,
20 she didn't like it. She's the only person here that did not --
21 that opposed the settlement agreement being signed.

22 I'm not sure -- I haven't read the whole settlement
23 agreement. I'm not sure what the consequences are if either
24 side violates the settlement agreement. And the other side can
25 violate it, as well, I might add.

1 I will say that I thought, since this was the first
2 couple of months of my client's putting their show together,
3 that if either party had an objection to anything that they
4 were doing, that I would get a call or a letter describing what
5 their objections were. In fact, even the letter that Mr. Levy
6 sent doesn't even accurately -- I mean, doesn't specifically
7 describe what the problem is.

8 That's the first thing.

9 Just to quickly address the announcers, if you watch
10 the video, the last thing -- I mean -- and I don't speak
11 German, so I don't know what they were saying prior to that.
12 But the last thing they did say were -- was, "The Kings of
13 Disco, former members of Village People," exactly the way
14 they're supposed to.

15 If there are some issues that need to be resolved,
16 that's what I'm here to do. But I think putting aside whether
17 the settlement agreement, the legal issues, as far as the
18 settlement agreement -- settlement transcript is enforceable or
19 not, in Mr. Levy's letter, he said, either the settlement
20 transcript is enforceable and therefore is a violation -- we
21 don't believe there's any violations -- or the settlement
22 agreement is not enforceable and it's an infringement. For
23 that, you don't even believe that it's an infringement.

24 So I'm happy to discuss the issues, but at the same
25 time, I'm very well versed in the trademark law. I understand

1 what my clients can and cannot do. Their sole purpose is to
2 follow the spirit and the guidelines of the settlement
3 agreement, and have done so.

4 And you know, adding to that, I'm not -- again, I
5 don't speak German, and I don't pretend to know German law. So
6 I will end on that. But I am amenable to hearing if the -- you
7 know, if there are issues, and I'll happily respond to them one
8 by one.

9 I also have my own issues with the intervenor's group
10 and things that they have done, though I thought over the last
11 four months that she was so quiet, why make a big deal about
12 this; everybody's doing what they're supposed to do.

13 Thank you, your Honor.

14 THE COURT: Mr. Abraham, do you want to be heard?

15 MR. ABRAHAM: Only to speak, your Honor, what I think
16 all parties know, which is that Mr. Rose has resigned from
17 Sixuvus. He's informed Kings of Disco that he no longer will
18 be continuing as a member. So you know, I hate to say we don't
19 really take a position, but in many respects, Judge, we don't
20 take a position.

21 THE COURT: All right. Ms. Willis?

22 MS. WILLIS: Your Honor, here's why I've never agreed
23 to go along with this is because --

24 THE COURT: That's just wrong. Numerous places in the
25 transcript, you agreed to the various portions of the

1 agreement. So I grant you that since then, you have declined
2 to sign off on any agreement, but in the settlement transcript,
3 there are repeated instances where you affirmatively said, "We
4 have an agreement."

5 So I'm just correcting what you just said. I know
6 you're not happy now, and that's what I want to hear about,
7 what's your position now.

8 MS. WILLIS: Well, I must correct your Honor. Your
9 Honor, in the transcript, time and time again, you hear an
10 agreement to agree. And the Second Circuit has made it very
11 clear that an agreement to agree is just not enforceable. But
12 I don't -- you know, I don't want to get caught up in this
13 right now.

14 But yes, there's an agreement to agree. That's where
15 we are. Your Honor, begging, this is why I really have not
16 gone along with this, because who's interested in coming here?
17 I'm not interested in having to come into the court and argue
18 about whether or not they've gone beyond. I don't want them
19 doing it. They can't do it, and they're out there blatantly
20 dressing as Village People. Nowhere in the settlement did I
21 agree that they can even do television shows, by the way. In
22 fact, that was something that was discussed, that they could
23 not. We would not grant them that right.

24 But not only on the television show, your Honor, where
25 they were introduced as Village People, when the show closed,

1 they again stated, "Village People."

2 I have seen their show, and it's not something that
3 we've agreed to at all, because what they've done is, as a part
4 of their show, your Honor, they simply say, "You know, look.
5 We're doing a couple of songs here, but now let's get down to
6 who we really are. And here's who we are. We're the original
7 boy band who is the Village People." And that's what they've
8 been doing. And that's completely passing off themselves as
9 Village People.

10 They also do it all over their Facebook pages. They
11 make these statements about, you know, that they are, you know,
12 Village People.

13 So this is blatant trademark infringement. It is not
14 covered under their -- under the settlement that they believe
15 they had. And nowhere in the language of the alleged agreement
16 did we say they could actually decide to simply pick a portion
17 of the show and present it. Well, guess what portion of their
18 show that they've selected? For the television show, they
19 selected the Village People portion. Okay? They performed as
20 Village People, and nothing else. They performed all the
21 Village People songs. They do the YMCA dance.

22 Your Honor, I'm just not going to tolerate it. I'm
23 not putting up with this. No, this is -- I don't want to be
24 here. These are the games they like to play. I'm not
25 interested. This is a blatant violation even of the agreement

1 that they say we have, which we don't. If I was, what are we
2 doing here? They're no longer the Village People. They want
3 to present themselves that way. They can't accept reality,
4 that they must move on.

5 And so that's where we are. They have blatantly
6 violated it, even the agreement that they propose to have.

7 THE COURT: Mr. Levy -- Mr. Adelman.

8 MR. ADELMAN: Okay. I mean, as far as I'm concerned,
9 that's just talk. If you look at the video, you will see
10 exactly what they did. They don't dress -- they do exactly
11 what the settlement transcript asks them to do, the way the
12 settlement transcript is set up to do. They clearly -- they
13 make it very clear that they are not the Village People
14 anymore. No one, if you compare --

15 Can I have the pictures?

16 If you compare the side-by-side of the modified
17 outfits that were agreed upon and what Ms. Willis's Village
18 People group wear, you will see a great distinction.

19 I must add that, again, the intervenor doesn't come
20 into court with entirely clean hands. If you look on the front
21 page of her Facebook page, underneath a picture of her group
22 performing, Victor Willis says, "Village People show why they
23 are truly the Kings of Disco, Capital 'K,' Capital 'D,' and
24 always have been." That's very recent: October 22nd,
25 12:46 p.m.

1 That, I might add, is a violation of my client's
2 trademark rights, "Capital 'K,' Capital 'D,'" and "Kings of
3 Disco."

4 The sole purpose of Ms. Willis's goal here is to shut
5 down my client. And my client has gone through great strides.
6 And I could take the video from their first German show with
7 you and go through it screen by screen and show you exactly why
8 it fits within the settlement transcript and the spirit of the
9 agreement. I doubt that the intervenor or the plaintiff has
10 even attempted to do that.

11 As for what the folks that introduced them and called
12 them out said, we're right. While we tell them, and they said,
13 "Kings of Disco, former members of the Village People," we
14 can't stop them in mid-sentence. What we can tell them -- but
15 I don't think anybody at that show thought that they were the
16 Village People.

17 The second point I might add is, I noticed that in
18 Mr. Levy's letter, he doesn't say anything about how my clients
19 have been marketed or, you know, how they put themselves out
20 there, which is the real key to this whole thing, to a certain
21 degree. Because the fans are coming to see Kings of Disco,
22 former members of Village People. The show they put on is
23 Kings of Disco, former members of Village People.

24 I might add, since -- I mean, I don't know where any
25 of this is going, but I believe, under current U.S. law, that

1 my clients are actually agreeing in their transcript to less
2 than what they could actually do. They have happily been doing
3 it the way they're doing it so they can move past their prior
4 role as the Village People and their new role as the Kings of
5 Disco.

6 You know, like I said, any issue that the plaintiff or
7 the intervenor has, I am prepared to address. If there is
8 something that deviates from the settlement transcript, we can
9 fix it.

10 For instance, very happy for my clients, when they go
11 on stage, to announce that they are the Kings of Disco. Seems
12 like a very easy fix, no matter what the announcers say.
13 That's the first thing.

14 The second thing is, I don't see anything in the
15 transcript agreement that limits their rights to appear on TV,
16 which, by the way, that TV program was three hours long and had
17 multiple, multiple acts. And the plaintiff has just cut out --
18 and it was -- my client's performance was five minutes and
19 twenty -- less than five minutes, I think, which, you know, is
20 maybe something we can talk about, because we never talked
21 about shows that are less than five minutes. What we talked
22 about is three-song shows. This TV appearance, in particular,
23 actually starts with them in track suits singing a non-Village
24 People song for, I think, a little bit of time. And then they
25 go into the modified uniforms and sing a medley of three

1 Village People songs.

2 If that has to be addressed or modified because the
3 parties can agree it does or does not fit within the settlement
4 agreement, then we should have a conversation about it, not a
5 court appearance or an order to show cause.

6 MS. WILLIS: Your Honor, in response --

7 MR. ADELMAN: That's how I -- that's my personal
8 opinion.

9 MS. WILLIS: Your Honor, in response to Mr. Adelman's
10 point, first of all, his clients don't have a valid trademark
11 of Kings of Disco, and never will.

12 THE COURT: That's not an issue here.

13 MS. WILLIS: No. Your Honor, he brought it up, so I'm
14 responding. Is that okay?

15 THE COURT: All right.

16 MS. WILLIS: Thank you, your Honor.

17 Now --

18 THE COURT: You know, Ms. Willis, I appreciate that
19 Mr. Levy has a bad knee. But I haven't heard that you do.
20 Mr. Adelman stood up. It's the appropriate way to show respect
21 for the Court. Is there a reason why you can't stand up?

22 MS. WILLIS: Well, I was really trying to show respect
23 for Mr. Levy. We're on the same table here. But I'll stand,
24 your Honor.

25 THE COURT: Thank you.

1 MS. WILLIS: No problem.

2 Your Honor, there is no valid Kings of Disco
3 trademark, and there should not be, if I have anything to do
4 with it, number one.

5 Number two, is Mr. Adelman here with a straight face
6 to say that the "Kings of Disco" is not a moniker of the
7 Village People? It is. We can prove it.

8 So the Village People --

9 THE COURT: I'm completely boggled, Ms. Willis. The
10 previous discussion that went on for a very long time on
11 March 28th of this year at length discussed the Kings of Disco
12 as an alternative entity. And I didn't hear any of this from
13 you then at all. I've re-read the entire transcript this
14 morning. There's no discussion on your part of, "They can't
15 use 'Kings of Disco.'" In fact, that was precisely what was
16 agreed to.

17 MS. WILLIS: Well, your Honor, you need to only read
18 my complaint in intervention. It's there. And I invite your
19 Honor to review it. Okay?

20 It was two things we talked about that I made clear.
21 We were not going to cover any rights to copyright -- okay? --
22 to music. And also, nowhere in the settlement did I ever
23 agree, or Mr. Levy or Can't Stop agree, that we are saying,
24 "You know, it's a valid name. You can -- you know, we're not
25 going to ever challenge it. It's valid." No. Nowhere. But

1 what does stand on record for the Court -- and again, I invite
2 your Honor to take a look at it -- is what I simply stated a
3 moment ago, and that is that they have no valid trademark right
4 to the "Kings of Disco," which, your Honor, is a totally
5 separate, independent issue here.

6 So having said that, again, the Village People, you
7 can't say to the Village People, "Oh, we know that you've been
8 referred to as the 'Kings of Disco,' you know, forever,
9 including in Rolling Stone Magazine." I can provide the Court
10 with a hundred references to Village People being the Kings of
11 Disco. The only purpose of Mr. Adelman's clients to want to
12 use that term, your Honor, is to attempt to pass themselves off
13 as Village People.

14 Now, that has been my position with this Court. And
15 if you take a look at, again, my complaint in intervention, it
16 is there. Nowhere have I ever agreed that I'm going to go
17 along with that name.

18 So I just wanted to make that clear to the Court.

19 MR. LEVY: Your Honor, can I just say something?

20 MR. ADELMAN: Let me just address two things.

21 One is, it's perfectly -- since you read the
22 transcript, your Honor, I'm not going to even go there. But
23 nevertheless, I just want to make this small point, which is,
24 trademark rights are very particular. My client has been using
25 the name prior to this lawsuit. Village People never used the

1 name in the trademark context.

2 But it does seem to me that what is happening here is,
3 Ms. Willis just threatened my clients. She just said, "They
4 will never use the 'Kings of Disco' as long as I have something
5 to say about it." That goes against everything that this
6 settlement transcript was entered into in good faith and agreed
7 to by everyone, including the rights holders themselves.

8 Ms. Willis is an intervenor. She's solely here at
9 Judge Seibel's behest -- or agreement. She has no rights
10 whatsoever of enforcement in the license agreement itself. The
11 licensor is the one that has those rights. And as they have
12 made plain -- I mean, now they're saying they take no position,
13 but they helped us draft the settlement agreement based on the
14 settlement transcript, and there are e-mails with Ms. Willis,
15 in which she makes comments to it, and does seem to agree on
16 things.

17 Nevertheless, the motion's before you.

18 That's all I have to say on that.

19 MS. WILLIS: Your Honor, I will say what I did say.

20 THE COURT: Wait. Wait. Mr. Levy's turn.

21 MR. LEVY: Your Honor, I know my letter was
22 (unintelligible). But years ago, when I was starting out, I
23 had a case with Judge Chin when he was a District Court Judge.
24 And the other -- I asked -- I wrote a letter to the judge about
25 something. The other side said, "It doesn't fit any motion.

1 What's he doing?" And Judge Chin said, "You know, I think what
2 Mr. Levy's doing is, he's bringing in a situation which is
3 awkward, where everyone is entrenched in fighting and
4 everything else. And he knows that this thing should be
5 resolved, and what he's hoping for is, he could find somebody
6 who is a neutral person in good faith who will say, 'You know
7 what? We have to have some common sense in here, and we're
8 going to get this thing resolved.'" And we did.

9 And I go back to that. It doesn't happen all the
10 time, but I guess, in writing my letter to the Court, that's my
11 hope. We do not -- this case should have been over a long time
12 ago. I don't disagree with the attorney for Sixxvus. You
13 know, we worked on the settlement agreement. But then we get
14 rip-sawed by the intervenor.

15 So we have a licensee who's complaining and
16 threatening that we're not protecting the license rights. We
17 have the former members of the group, who were certainly
18 entitled to make reference to what they did in the past.

19 We're sitting here going like this is insane. And
20 what we we're looking at is, no matter what the Court rules --
21 and you've heard Ms. Willis speak now, and you've heard
22 (unintelligible) -- they're going to keep suing each other, and
23 we're going to keep being brought in.

24 THE COURT: Oh, yes, there's no question about that.

25 MR. LEVY: And we don't want that.

1 THE COURT: No matter what the Court rules, there's no
2 question that, at the very least, looking at past behavior,
3 Ms. Willis, on behalf her client, is going to pursue the matter
4 in court. So I don't for a second believe that anything that I
5 do is going to conclude the matter.

6 MR. ADELMAN: Actually, your Honor, I disagree with
7 that. I think that it -- while we're hoping that you find for
8 us, since there was no real opposition to the transcript, as
9 far as based under the law, if you do find that the settlement
10 agreement is enforced and the settlement agreement becomes
11 enforced, that will narrow -- and you've retained jurisdiction,
12 that will narrow the field of scope that Ms. Willis can
13 continue to try to barrage us with court filings and what-not.
14 And that has a finite -- that will end. It's finite. There's
15 appeals court that she could go to, but after that, that's it.
16 And at some point --

17 Well, a long time ago, I was involved in a case in
18 which the plaintiff -- the Court -- actually, the Southern
19 District Court -- ordered the plaintiff to stop suing my client
20 without their permission. Not suggesting that that's a
21 necessity today. I'm just saying that I don't think the fear
22 that Ms. Willis is trying to put into this Court, that she's
23 going to sue us all into oblivion, should prevent us from
24 concluding the matter in a fair and equitable manner, either
25 today or with your decision.

1 Thank you.

2 MS. WILLIS: First of all, your Honor, I've not sued
3 them, not once, not even one time. And nowhere near in any of
4 the transcript where you see me talk about suing. But I can
5 tell you this. Their concern is their concern. Their concern
6 is that I'm not going to allow them to do -- continue to do
7 what they're doing, and they're correct on that.

8 Now, I want to correct something Mr. Adelman --

9 THE COURT: How would you do that, other than suing
10 them? I don't understand. You just said, "I'm not suing them,
11 I haven't sued them, and I'm not threatening to sue them." And
12 then in the next sentence, you said, "But I'm not going to let
13 them continue to do it."

14 I mean, other than you walking onto the stage and
15 tearing their costumes off, what other method do you have to
16 stop them than to sue them? To say that you're not threatening
17 to sue them and then say, "But I'm going to stop them," seems a
18 little self-contradictory.

19 MS. WILLIS: What I said, your Honor, was that I have
20 not sued them. Okay? Not once. That's what I said on the
21 record. And your Honor can go and read the transcript. You'll
22 see that.

23 All I'm saying here is that Mr. Adelman stated on the
24 record that, "Oh, Ms. Willis is suing."

25 What are you talking about? I've not sued your client

1 yet.

2 You know, I'm hoping if this continues -- I mean,
3 they've sued Can't Stop. They're way ahead of me. And Can't
4 Stop sued them. So why aren't we talking about that? Their
5 concern that -- again, that I'm defending against them. Okay?
6 That's it. That's all they're concerned about. They don't
7 want me to defend against them. Well, I'm here to let the
8 Court know that I will, if I feel that they've stepped on my
9 rights as the licensee. Okay? However, I've not done so.
10 They make it appear that I have. I haven't. I've not got
11 started yet on them. Okay? That's where we are. We're trying
12 to get past this issue right now, so . . .

13 And he twisted my words on -- what I said with respect
14 to the use of the name is that they have no valid trademark
15 rights, your Honor, in that name. Okay? And I believe that
16 the Trademark Trial and Appeals Board will agree with that.

17 But again, that's a separate issue. They're seeking
18 the trademark. I've never agreed to go along with their name,
19 not once, and I never will.

20 MR. ADELMAN: Just for the record, there is a valid
21 trademark filed, and it has cleared on B. So I would disagree.
22 Plus, we've used it in commerce at this point.

23 MS. WILLIS: Doesn't mean that it is valid.

24 MR. ADELMAN: It is a valid trademark.

25 THE COURT: Ms. Willis, I will give you lots of

1 opportunity to speak, but please don't interrupt each other.

2 MR. ADELMAN: Thank you, your Honor.

3 MS. WILLIS: It doesn't mean that it is valid, your
4 Honor. And it certainly does not mean that it is
5 incontestable. So come on.

6 MR. ADELMAN: Your Honor --

7 THE COURT: But it is not in contest here. And in the
8 settlement conference in this case, the agreement, not with
9 regard to trademark or copyright, but the agreement to settle
10 this case included that Sixxvus could advertise, book
11 performances under, commercially exploit or otherwise use, the
12 name Kings of Disco, but without saying "Kings of Disco,
13 formerly Village People." They could say, "Kings of Disco,"
14 "Kings of Disco, former members of Village People," "Kings of
15 Disco, formerly members of Village People." That was discussed
16 at length.

17 But this case is not intended to decide the trademark
18 issue in that regard.

19 I'm not so sure that we came to an agreement,
20 Mr. Adelman, about Mr. Willis using "Kings of Disco." I'm not
21 so sure that that part of the agreement was reciprocal. There
22 were certain parts of the agreement that clearly were
23 reciprocal.

24 MR. ADELMAN: Whether it is or not in the transcript,
25 we have the superior trademark law.

1 THE COURT: I think it's a separate trademark issue.

2 MR. ADELMAN: Yes. It may be. I'm just saying --

3 THE COURT: It wouldn't be resolved in settlement
4 here.

5 MR. ADELMAN: I'm just saying that -- first of all, I
6 think that's a disparagement under the settlement transcript.
7 And you know, I think we have superior trademark rights, and
8 they use "Capital 'K,' Capital 'D.'" It just shows the
9 purposeful nature of the intervenor, that they're -- you know,
10 again, here with my hands saying that there's issues. Tell me
11 what they are. I'm here to help resolve them. You've heard
12 the intervenor saying, "No matter what happens in the world, I
13 am going to stop them."

14 MS. WILLIS: That's not what I said, your Honor.

15 MR. ADELMAN: That's my characterization of it.

16 MS. WILLIS: Well, thank you.

17 MR. ADELMAN: That's what I hear.

18 MS. WILLIS: Your Honor, look. If they lack the
19 trademark, and if they're saying they'd like to do -- go along
20 with the spirit of the settlement, why not amend the trademark
21 to state "Kings of Disco, former members of Village People"?
22 That's what we talked about there, and they know it. They're
23 attempting to get to the broad tag of just simply "Kings of
24 Disco." And that's why it would never stand in the trademark
25 office.

1 THE COURT: Well, I have to disagree. The transcript
2 reflects that the discussion was that they could use "Kings of
3 Disco" standing alone, or "Kings of Disco, former members of
4 Village People," or "Kings of Disco, formerly members of
5 Village People." So long as the "Kings of Disco" was at least
6 as large as anything else or potentially larger than the
7 reference to the Village People, that was discussed at length,
8 and agreed to. So I'm not quite sure that I can agree with
9 you.

10 I think what I'm going to need to do, unfortunately --
11 and it's not something that I want to do, but I think, in
12 response to Mr. Levy's letter to the Court, I do need to see
13 whatever recordings there are that are relevant to this issue;
14 essentially, to make sure that any concerns about performance,
15 if they are touched upon in the transcript of the settlement
16 discussion, are incorporated into what may be a final and
17 enforceable settlement document. I haven't come to a complete
18 decision on that, but we are working toward that. But I don't
19 want to do it here in open court.

20 Is it possible, Mr. Adelman, for you to make those
21 available for us?

22 MR. ADELMAN: Not only would I be happy to make them
23 available for you, I would like to send -- we have compiled,
24 though it's not in judge form, as I would call it, we would
25 like to send you the breakdown and the explanations that we had

1 prepared to discuss in court, if Mr. Levy had been allowed to
2 bring his projector. So I would like to present both of those
3 things to you. And I think that's -- yes, that's fine.

4 THE COURT: Of course, with service on Ms. Willis --

5 MR. ADELMAN: Yes.

6 THE COURT: -- and Mr. Levy --

7 MR. ADELMAN: Absolutely.

8 THE COURT: -- and they can respond in any way that
9 they'd like.

10 MR. LEVY: No objection on our part. Maybe there's
11 other concerts.

12 You know, when we --

13 THE COURT: I don't mean to interrupt, but I really
14 don't want to have to watch more concerts than are absolutely
15 necessary.

16 MR. LEVY: Okay. So then just those two.

17 MR. ADELMAN: Yes.

18 MR. LEVY: When we brought the lawsuit, I remember
19 Judge Seibel (unintelligible) one, we terminate the contract
20 after all these years so abruptly. And at the trial -- like my
21 client's son runs the company now, spoke, I think, very
22 practically about your clients. And we all felt bad about it,
23 but we said, "Look. My client is an 85-year-old man who's been
24 in litigation for almost a decade with the Willises, and he
25 just couldn't take it anymore." And the idea was that we just

1 said, "Okay. Sixxvus had their run. We'll give it to the
2 willises now. Just leave us alone. Eighty-five; I have a
3 couple of good years left of my life. Leave me alone."

4 And we find ourselves in a situation where we just --
5 they should all live and be well and play to their own
6 audiences, and it's fine. But this constant fighting -- and we
7 keep getting dragged into it, because like well, we're the
8 licensor. What are we supposed to do? What we're supposed to
9 do is, can't you guys work it out? I mean, and they never do,
10 and we want out of the case already.

11 MR. ADELMAN: We actually did work it out. We have a
12 settlement transcript.

13 I appreciate what Mr. Levy said, but he's standing
14 there going, "Boo-hoo, poor me," when he's not controlling his
15 own licensee. He knows that we came to an agreement. He has
16 control of the licensee. That's their agreement. So I just
17 want to add that I don't think it's -- I don't think that he's
18 being dragged into the middle. I think he's being dragged one
19 way. I have my --

20 I'm just going to say this. I don't think Mr. Levy
21 wrote this letter.

22 MR. LEVY: No, that's not true.

23 MR. ADELMAN: I could be wrong about that.

24 MS. WILLIS: We have an agreement to agree, and the
25 Second Circuit will have a lot to say about that. That's all I

1 can say on that.

2 But I can tell you this. Again, I don't know what
3 Mr. Adelman is talking about, because there hasn't been
4 anything from me. I haven't communicated with him. I haven't
5 filed anything with the Court since the time of -- what are
6 they talking about? Is he afraid of something? But there has
7 been a letter from Mr. Levy here on this. And there's been
8 plenty from their side. So where's the beef? as they used to
9 say. I don't know what he's talking about. He's afraid of
10 what's about to happen.

11 THE COURT: Look. Look. Let me just --

12 MR. ADELMAN: Yes, your Honor.

13 THE COURT: I do want to comment, Ms. Willis.

14 You had sent a letter to Judge Seibel about -- saying
15 something about if a decision isn't made within a certain
16 period of time that -- I don't even know -- that somebody wins.
17 But we don't know where that comes from, because there's no
18 such rule in the federal courts. There are certain
19 consequences in criminal cases if decisions aren't rendered in
20 30 days, the passage of the speedy trial clock, for instance.
21 But it doesn't apply in civil cases. So I don't want you to
22 think we ignored your letter to that effect.

23 MS. WILLIS: Oh, absolutely. I agree, your Honor.
24 And in other words, that was my communication. That's it. I
25 wanted to get clarification, but I've not done anything.

1 THE COURT: Okay. Mr. Adelman, your turn.

2 MR. ADELMAN: No, actually, your Honor, I just wanted
3 to say that I'm not going to make any comment in response,
4 because I think your Honor sees right through it.

5 But nevertheless, I would like clarification on one
6 item, and that is, I'm going to send you the videos. How would
7 you like them?

8 THE COURT: On regular readable disks.

9 MR. ADELMAN: That's fine.

10 THE COURT: And what we will do is, we will have our
11 IT staff just confirm that there's no bad stuff in it before we
12 watch it.

13 MR. ADELMAN: No. Absolutely. That's why I asked.
14 And we'll have that delivered to you.

15 THE COURT: Good.

16 MR. ADELMAN: I'd like to ask, due to my schedule --
17 and I want to put this together properly -- if we could have a
18 week to get that to you.

19 THE COURT: Sure.

20 MR. ADELMAN: Thank you, your Honor.

21 THE COURT: Sure.

22 MS. WILLIS: Your Honor, why -- it was -- your Honor,
23 it was the plaintiff's side that requested this hearing, and
24 wanted to introduce the evidence. Why should we trust this
25 edited video from them? We have the unedited. So I would like

1 to provide that to have Mr. Levy --

2 THE COURT: You may send whatever you'd like,
3 Ms. Willis.

4 MS. WILLIS: Thank you.

5 THE COURT: And Mr. Levy can send whatever he'd like.

6 I'm not -- he had offered at the outset to send it.
7 So I was just taking him up on that offer. But I'm certainly
8 not going to prevent you from sending it. Lord knows we've
9 been seeing on the news about what happens with edited videos.

10 MR. ADELMAN: Yes, your Honor.

11 THE COURT: So I wouldn't want to be looking at
12 something that wasn't complete and accurate. On the other
13 hand, I'm not going to pretend that I'm going to be watching
14 hours and hours of this concert. No disrespect, but it's not
15 my favorite music in the world.

16 MR. ADELMAN: The way that I'm -- the way that we've
17 set up what I'm going to call the "dialogue" is that we're
18 going to give you time stamp numbers. So the hour-long video,
19 you know, to the extent you want to watch whatever you want,
20 you could probably get through it in under ten minutes. And
21 the five-minute video, you could probably get finished in under
22 five minutes.

23 THE COURT: Yes.

24 MR. ADELMAN: So we're cognizant of the Court's time,
25 and we want to make this as easy as possible.

1 THE COURT: All right. And you may send me whatever
2 you'd like. If you want it to be just portions for whatever
3 reason, just identify what you're sending. All right? Fair?

4 Very good.

5 Thank you, everyone.

6 We will try to get you something as soon as possible.

7 MR. ADELMAN: Appreciate that, your Honor.

8 THE COURT: Have a nice holiday on Monday.

9 ALL COUNSEL: Thank you.

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